

ST 99-1

Tax Type: SALES TAX

Issue: Responsible Corp. Officer - Failure to File or Pay Tax

DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Case No. 98 ST 0000
)	NPL No. 0000
v.)	
)	
"JOE SCHNARZ",)	Administrative Law Judge
Resp. Officer of)	Mary Gilhooly Japlon
"You Name It", Inc.)	

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General John Alshuler, on behalf of the Department of Revenue of the State of Illinois; "Joe Schnarz", *pro se*.

SYNOPSIS:

This cause comes on for hearing pursuant to the protest filed by "Joe Schnarz" in response to Notice of Penalty Liability ("NPL") No. 0000 issued by the Department of Revenue ("Department") on February xx, 19xx in the amount of \$58,045.28. Said NPL was issued to "Joe Schnarz" as responsible officer of "You Name It", Inc. The notice assesses a penalty for personal liability equal to the amount of tax, penalty and interest not paid by the corporate taxpayer. The period at issue is December 1995 through October 1996.

FINDINGS OF FACT:

1. The Department established its *prima facie* case of tax liability by the submission into evidence of Notice of Penalty Liability No. 0000 under the certificate of the Director of Revenue. (Dept. Ex. No. 1; Tr. pp. 8-9).

2. Said NPL was issued to "Joe Schnarz" on February xx, 19xx in the amount of \$58,045.28 for Retailers' Occupation Tax, penalties and interest for the period of December 1995 through October 1996. (Dept. Ex. No. 1; Tr. pp. 7-8).
3. Mr. "Schnarz", Mr. "Randall Mercutio" and Mr. "Harold Wildman" started the business, "You Name It", Inc., in 1972. (Tr. p. 10).
4. Mr. "Schnarz" owned 50 percent of the stock. (Tr. p. 15).
5. The corporate taxpayer, "You Name It", Inc. grew from distributing cleaning supplies out of Mr. "Schnarz"'s trunk to an office complex with 17 employees. (Tr. pp. 10-11).
6. In approximately 1994, "You Name It", Inc. became the prime supplier for "Brush 'Em Up" Cleaning, one of the major cleaning contractors in Chicago. (Tr. pp. 11-12).
7. Mr. "Schnarz" co-signed on a bank loan in the amount of \$50,000. (Tr. p. 12).
8. A French company purchased "Brush 'Em Up" Cleaning, however. (Tr. p. 12).
9. Under its new ownership, "Brush 'Em Up" Cleaning lost millions of dollars of business. (Tr. p. 12).
10. "Brush 'Em Up" was not able to pay "You Name It", Inc. what it owed the company. (Tr. p. 13).
11. In turn, "You Name It", Inc. was not able to pay its vendors and other creditors. (Tr. p. 13).
12. Ultimately, "You Name It", Inc. reduced its labor staff to four employees, and moved to smaller quarters. (Tr. p. 13).
13. In addition, Mr. "Schnarz" had entered into an agreement with Mr. "Mercutio" to buy his 25 percent interest in the company. (Tr. pp. 14-15).
14. Due to the failure of "You Name It's" major customer, Mr. "Schnarz" was paying Mr. "Mercutio", while not paying other creditors. (Tr. p. 16).
15. The agreement Mr. "Schnarz" had with Mr. "Mercutio" provided that if "Schnarz" defaulted on a payment, the business went to "Mercutio". (Tr. p. 16).
16. The business failed and the corporation filed bankruptcy. (Tr. p. 16).
17. The business was liquidated, and Mr. "Schnarz" paid off the bank loan and other debts. (Tr. p. 17).

CONCLUSIONS OF LAW:

Section 3-7 of the Uniform Penalty and Interest Act ("UPIA") (35 ILCS 735/3-7) provides in pertinent part as follows:

- (a) Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section.

The statute imparts prima facie correctness to the Notice of Penalty Liability once a copy of the Notice certified by the Director of Revenue is accepted in evidence. That is, all of the statutory elements required for imposition of the penalty, including willfulness, are deemed satisfied once a certified copy of the NPL is admitted into evidence. (Branson v. Department of Revenue, 268 Ill.App.3d 818 (4th Dist. 1994)). It is then the responsibility of the responsible officer to offer evidence establishing that one or more of the elements of the Department's prima facie case is lacking. (Branson, supra).

In the instant case, Mr. "Schnarz" testified that he owned 50 percent of the stock. He further stated that the corporate taxpayer failed due to the business failure of "You Name It's" major customer. Mr. "Schnarz" acknowledged that he repaid a bank loan and other creditors, presumably preferring them to the Department of Revenue. The narrative of events is certainly a lamentable one. However, given the fact that "Joe Schnarz" failed to offer any evidence, testimonial or documentary, to rebut the presumption that he was a responsible corporate officer or employee who willfully failed to file or pay a trust tax, the NPL must be affirmed.

RECOMMENDATION:

Based upon the foregoing, it is my recommendation that Notice of Penalty Liability No. 0000 as issued to "Joe Schnarz" as responsible officer of "You Name It", Inc. be affirmed as issued.

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